IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

CRP.No. 1290 of 2000(G)

LB.372/1973 of TALUK LAND BOARD, PALAKKAD

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REVN. PETITIONER:

K.CHELLAPPAN NAIR, S/O.CHERUNNI AMMA, RESIDING AT KUNNATHU VEEDU, KONGAD I VILLAGE, PALAKKAD TALUK, PALAKKAD DIST.

BY ADV. SRI.N.N.SUGUNAPALAN

RESPONDENTS:
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1. TALUK LAND BOARD, PALAKKAD.

2. TAHSILDAR, PALAKKAD.

3. STATE OF KERALA, REP. BY THE CHIEF SECRETARY TO GOVT., SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI THOMAS JOHN AMBOOKKAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/11/2007, ALONG WITH CRP NO. 1730 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NO.2624/2000 IN CRP NO.1290/2000

DISMISSED

21.11.2007. Sd/-K.T.SANKARAN, JUDGE

//TRUE COPY//

K.T. SANKARAN, J.

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C.R.P. Nos. 1290 OF 2000 & 1730 OF 2003

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Dated this the 21st November, 2007

O R D E R

C.R.P.No. 1290 of 2000 is filed by the declarant in LB. No. 372 of 1973 of the Taluk Land Board, Palakkad challenging the order dated 11.04.2000. The Civil Revision Petition was admitted and an interim order dated 16.06.2000 was passed which reads as follows:

> *"There will be a stay of dis-possession of the petitioner from 4.52 acres of property covered by gift deed of the year 1968. Regarding the balance extent, the petitioner can exercise his option and the same will be considered. "*

2. The Taluk Land Board passed an order dated 19.12.2000 exempting an extent of 4.52 acres under the misapprehension that this court had finally disposed of C.R.P. 1290 of 2000. The order dated 19.12.2000 is challenged by the State in C.R.P. 1730 of 2003 .

3. The Revision Petitioner/declarant filed a statement under section 85 A of the Kerala Land Reforms Act , 1963 (hereinafter referred to as 'Act'). He has shown his wife and five children as members of the statutory family. In the draft statement issued to the declarant, the total extent of the land held by the declarant was shown as 29.71 acres; exemption was granted for an extent of 62 cents; ceiling area was fixed at 12 acres and the declarant was directed to surrender an extent of 17.09 acres . After considering the objections filed by the declarant and the claim petitions made by several persons, the Taluk Land Board passed the final order dated 17.11.1982, by

which it was held that the declarant is liable to surrender an extent of 8.32 acres . Challenging the order passed by the Taluk Land Board , the declarant filed C.R.P. No. 20 of 1983 , which was disposed of by this court as per order dated 05.02.1987. This court held that though many points were raised in the revision, the only point urged at the time of hearing was about exercise of option. An opportunity to exercise option was granted in favour of the petitioner .

4. There was litigation pending before the civil court between the declarant and his brother Madhavan Nair. The legal heirs of Madhavan Nair filed C.R.P.No.17 of 1983 challenging the order dated 17.11.1982. The declarant opted to surrender the land over which Madhavan Nair had laid claim. It was brought to the notice of the court in C.R.P. 17 of 1983 that the revision filed by the declarant was disposed of earlier granting liberty to exercise fresh option. However, in C.R.P. 17 of 1983, as per judgment dated 11.01.1988, the High Court took the view that the matter requires re-consideration and the order passed by the Taluk Land Board dated 17.11.1982 was vacated. It was held that only on a proper determination of the disputes involved in the appeals pending before the civil court the question of surplus land to be surrendered by the declarant and the option to be exercised by him in that behalf would arise. The Taluk Land Board was directed to re-consider the case after the disposal of the appeals pending before the civil court.

5. Challenging the order dated 17.11.1982, some of the claimants had filed C.R.P.No. 2982 of 1984. That revision was also disposed of on 11.01.1988 holding that the extent of 3 acres and 47.25 cents claimed by the claimants cannot be deleted from the total extent as all the transactions in favour of the claimants are after

01.01.1970 . Accordingly, C.R.P.No. 2982 of 2004 was dismissed.

6. After the decision of the appeals by the Sub Court, Palakkad, in respect of the disputes between the declarant and Madhavan Nair, Second Appeal No. 174 of 1990 was filed by the declarant before the High Court. The High Court as per the judgment dated 09.12.1997 reversed the decree of the lower appellate court and a decision was rendered in favour of the declarant in respect of 2.46 acres of land.

7. After the disposal of the Second Appeal, the Taluk Land Board considered the matter afresh. At that time, the declarant put forward a new contention that an extent of 4.52 acres of land was gifted by him in favour of his minor children in the year 1968. The Taluk Land Board rejected this contention put forward by the declarant that the extent of land covered by the gift deed should be excluded from the ceiling limit. The Taluk Land Board held that this is a new claim put forward by the declarant and as per the order passed by the High Court in Revision earlier, such a plea cannot be entertained.

8. The Taluk Land Board found, as per the order dated 11-4-2000, that an extent of 7.32 acres of land was taken possession of by the Tahsildar. An extent of one acre in Sy.No. 18/5 was acquired by the Government and that extent of land was taken as surrender of excess land by the Taluk Land Board. As per the order passed by the Taluk Land Board, the declarant was directed to surrender an extent of 8.32 acres . The order of the Taluk Land Board would indicate that the said extent was already taken possession of.

9. The learned counsel for the declarant submitted that the Taluk Land Board should have considered the contention put forward by the declarant that an extent of 4.52 acres of land was gifted to his minor children and should have deleted this extent from the ceiling area. The gift deed is dated 17.11.1968. The learned counsel for the petitioner submitted that one of the donees had attained majority as on 01.01.1970 and therefore, the gift deed is valid. I am not inclined to accept this contention put forward by the learned counsel. Section 84(1A) of the Act provides that notwithstanding anything contained in sub-section (1) of Section 84 , or in any judgment, decree or order of any court , any voluntary transfer effected by means of a gift deed executed during the period commencing on the first day of January 1970 and ending with the 5th day of November, 1974 by a person owning or holding land in excess of the ceiling area in favour of his son or daughter or son or daughter of his predeceased son or daughter shall not be deemed to be or ever to have been invalid, provided that the extent of land comprised in the gift deed does not exceed the ceiling area and if it so exceeds to the extent of the ceiling area. The proviso to sub-section (1A) provides that the said sub-section shall not apply to a transfer in favour of a person who was an unmarried minor on the first day of January, 1970. In the case on hand, the gift deed was not executed during the period mentioned in sub-section (1A). It is also not proved that as on 01.01.1970 , the donee had attained majority. The Taluk Land Board was justified in rejecting the contention put forward by the petitioner.

10. The learned counsel for the declarant submitted that the extent covered by the gift deed could still be excluded from the purview of the ceiling case in view of the Kerala Land Reforms (Amendment) Act, 2005 (Act 21 of 2006) (hereinafter referred to

as Act 21 of 2006 .) By the Amendment Act, Section 7E and sub-section (4) of Section 84 were inserted. The provisions so inserted read as follows:

> *"7E. Certain persons who acquired lands to be deemed tenants: Notwithstanding anything to the contrary contained in S.74 or S. 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom or usage, or in any judgment, decree or order of any court, tribunal or other authority , a person who at the commencement of the Kerala Land Reforms (Amendment)Act, 2005, is in possession of any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area, during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964) , and the date of commencement of the Kerala Land Reforms (Amendment)Act, 2005, shall be deemed to be a tenant".*

Amendment of S. 84:

> *"(4) Notwithstanding anything contained in sub-ss (1), (1A) or (2), or in any judgment, decree, or order of any court, tribunal or other authority, no acquisition of land referred to in S.7E shall be deemed to be invalid, or ever to have been invalid by reason only of the fact that the land so acquired was found included as, or forming part of, the land liable to be surrendered by the transferor as excess land under the provisions of this Act and no suit or other proceedings including proceedings for eviction relating to the said land shall be instituted, maintained or continued in any court or tribunal against any person who is a deemed tenant under S.7E and every such suit or proceedings pending shall stand abated.*
>
> *Provided that no ceiling cases wherein excess land has been*

physically taken over and distributed to landless labourers or reserved for public purposes as provided in this Act shall be re-opened.

Provided further that if the Taluk Land Board is satisfied that the transfer of land made by a person, in possession of excess land is calculated to defeat the ceiling provisions, it may take into account the land so transferred in determining his ceiling area, and may direct him to surrender such extent of land held or possessed by him.

Provided also that no ceiling cases or proceedings in which any land has already been surrendered by or assigned from a person as excess land before the commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be re-opened. "

11. In order to attract Section 7E and to hold that a person is a deemed tenant , the following conditions must be satisfied:

(a) At the commencement of the Amendment Act, 2005, the person concerned is in possession of land not exceeding 4 acres in extent;

(b) the said land was acquired by him or by his predecessor-in-interest from a person holding land in excess of ceiling area;

(c) such acquisition by him was by way of purchase or otherwise;

(d) such acquisition must be on payment of consideration; and

(e) the acquisition must be between the date of commencement of the Kerala Land Reforms Act 1963 (Act 1 of 1964) and the date of commencement of Amendment Act, 2005 (Act 21 of 2006).

A gift deed executed by the declarant would not come within the purview of Section 7E. A specific condition stipulated in Sec. 7E is that the acquisition must be on payment of consideration. Learned counsel for the declarant submitted that a gift deed is

supported by consideration and the consideration is love and affection; and therefore, even a gift deed is covered by Section 7E. I am not inclined to accept this contention. The expression used is payment of consideration. Evidently, there cannot be any 'payment' in the matter of love and affection. The purpose sought to be achieved by the introduction of Section 7E is to protect bonafide transfers for consideration where a third party has come into possession of lands, acquired by him from a declarant/assessee . It is not intended to protect donees of declarants/assesses and to exclude the lands covered by such gift deeds from the purview of the ceiling provisions.

12. There is yet another reason to reject the contention put forward by the declarant. On a careful analysis of Sec. 7E, I am of the view that the person who is entitled to the benefit of Section 7 E must be a stranger and not a member of the statutory family which holds lands in excess of the ceiling area. The Kerala Land Reforms Act provides for the ceiling area in respect of adult unmarried person, family consisting of a sole surviving member, family consisting of two or more but not more than five members , a family consisting of more than five members and any other person other than a joint family. Section 82 of the Act provides for Ceiling area . Sub-sections (1) and (2) of Section 82 are as under:

> *""82. Ceiling area:- (1) The ceiling area of land shall be ,-*
> *(a) in the case of an adult unmarried person or a family consisting of a sole surviving member, five standard acres, so however that the ceiling area shall not be less than six and more than seven and a half acres in extent;*
> *(b) in the case of a family consisting of two or more, but not more than five members, ten standard acres, so however that the ceiling area shall not be less than twelve and more than fifteen acres in extent.*

> *(c) In the case of a family consisting of more than five members, ten standard acres increased by one standard acre for each member in excess of five, so however that the ceiling area shall not be less than twelve and more than twenty acres in extent; and*
> *(d) in the case of any other person, other than a joint family, ten standard acres, so however that the ceiling area shall not be less than twelve and more than fifteen acres in extent*
> *(2) For the purposes of this Chapter, all the lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family. "*

Section 2(1) of the Act defines "adult unmarried person" as an unmarried person who has attained 18 years of age. Section 2(14) of the Act defines "family" as husband, wife and their unmarried minor children or such of them as exist. "Joint family" is defined under section 2 (20) of the Act as a Hindu undivided family, a Marumakkathayam tarwad or tavazhi, an Aliasanthana Kudumba or Kavaru or a Nambudiri Illam. In the case of a family, the ceiling area is fixed taking into account the number of members of the family. When such ceiling area is fixed, there cannot be any further benefit given to such family by excluding the property sold or gifted or otherwise demised by a member of that family in favour of another member of that family. If it were to be held so, the provisions of the Kerala Land Reforms Act could be easily defeated. Such a transaction is not sought to be protected by Section 7E. What is intended is to protect bonafide purchaser for value. The second proviso to sub-section (4) of Section 84 introduced by the Amendment Act would make the position clear. As per the second proviso, if the Taluk Land Board is satisfied that the transfer of land is intended to defeat the ceiling provisions, such land shall also be included for determining the ceiling area. I am of the view that a member of the

statutory family who purchased land from another member of the statutory family, is not entitled to claim the benefit of Section 7E.

13. From the proceedings it is seen that in respect of 3 acres and 47.25 cents, strangers had preferred claim petitions. In the revisions filed by them, their contentions were rejected only on the ground that the acquisition was after 01.01.1970. Learned counsel for the petitioner submitted that the Taluk Land Board may be directed to consider the question whether the extent of 3 acres and 47.25 cents could be excluded from the ceiling case, the land being those held by the strangers under registered assignment deeds executed by the declarant. Though it is stated in the order dated 11.04.2000 that an extent of 7. 32 acres of land was taken possession of by the Tahsildar and an extent of 1 acre has been adjusted from out of the land acquired by the Government , it is relevant to note that as per the subsequent order dated 19.12.2000 passed by the Taluk Land Board, the Tahsildar was directed to re-convey to the declarant an extent of 8.32 acres which was already taken possession of by the Tahsildar. It is true that the third proviso to Section 84 (4) of the Act states that no ceiling cases or proceedings in which any land has already been surrendered by or assigned from a person as excess land before the commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be re-opened. But in the present case, the Taluk Land Board has passed an order dated 19.12.2000 directing the Tahsildar to reconvey to the declarant an extent of 8.32 acres of land. Though the State filed revision against the order dated 19.12.2000, no stay petition was filed and evidently no stay was granted. Therefore, I am of the view that the third proviso to Section 84 (4) of the Act would not stand in the way of a direction being issued to the Taluk Land Board to consider the question whether the extent of 3 acres 47.25 cents covered by the

assignment deeds executed by the declarant could be excluded from the ceiling area. The Taluk Land Board shall issue notices to all the claimants who had filed claim petitions earlier and who claimed under registered documents executed before the date of commencement of the Kerala Land Reforms (Amendment)Act 2005 . The Taluk Land Board shall dispose of the case in respect of 3 acres and 47.25 cents as expeditiously as possible, after hearing all the persons concerned.

14. The order dated 19-12-2000 passed by the Taluk Land Board, which is challenged by the State in C.R.P.No. 1730 of 2003, is wholly without jurisdiction. The Taluk Land Board had earlier disposed of the case as per the order dated 11-4-2000. That order was challenged by the declarant in C.R.P. No. 1290 of 2000. The High Court had granted only an order of stay in C.R.P. No. 1290 of 2000 and even that stay order was confined to an extent of 4. 52 acres. The Taluk Land Board erroneously thought that the High Court had finally disposed of C.R.P. No. 1290 of 2000. On that erroneous impression, the Taluk Land Board, as per the order dated 19-12-2000, exempted the extent of 4.52 acres from the ceiling area. C.R.P.No. 1730 of 2003 filed by the State is liable to be allowed and the order dated 19-12-2000 passed by the Taluk Land Board is liable to be set aside.

In the result:

(i) C.R.P.No. 1290 of 2000 is partly allowed and the order dated 11.04.2000 is modified to the extent that the Taluk Land Board shall consider the question whether the claimants who preferred the claim petitions earlier in respect of 3 acres 47.25 cents would be entitled to the benefit of Section 7E of Act 21 of 2006 and whether that much extent of land is liable to be excluded from the ceiling case. The Taluk Land Board shall

issue notice to the declarant as well as the claimants and afford an opportunity of being heard to them. The lands shall be inspected and verified with relevant documents by the authorised officer.

(ii) The finding of the Taluk Land Board that the declarant and his statutory family are not entitled to claim any exclusion in respect of 4.52 acres of land covered by the gift deed is confirmed.

(iii) Excluding the extent of 3 acres 47.25 cents, the Taluk Land Board will be free to take possession of the balance extent.

(iv) C.R.P.No. 1730 of 2003 filed by the State is allowed and the order dated 19-12-2000 is set aside.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. Nos. 1290 OF 2000
& 1730 OF 2003

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Dated this the 21st November, 2007

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